

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 * * *

9 ANTONIO LEE MIXON JR.,

10 Plaintiff,

11 v.

12 ELIZABETH BROWN, *et al.*,

13 Defendants.

Case No. 2:16-cv-02711-MMD-VCF

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE
CAM FERENBACH

14
15 Before the Court is the Report and Recommendation of United States Magistrate
16 Judge Cam Ferenbach (ECF No. 3) ("R&R") relating to Plaintiff's *pro se* complaint (ECF
17 No. 1-1). Plaintiff filed his objection on December 8, 2016 ("Objection"). (ECF No. 5.)

18 This Court "may accept, reject, or modify, in whole or in part, the findings or
19 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party
20 timely objects to a magistrate judge's report and recommendation, then the court is
21 required to "make a *de novo* determination of those portions of the [report and
22 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails
23 to object, however, the court is not required to conduct "any review at all . . . of any issue
24 that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
25 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
26 magistrate judge's report and recommendation where no objections have been filed. See
27 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
28 of review employed by the district court when reviewing a report and recommendation to

1 which no objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
2 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
3 view that district courts are not required to review "any issue that is not the subject of an
4 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
5 the court may accept the recommendation without review. *See, e.g., Johnstone*, 263 F.
6 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
7 which no objection was filed).

8 In light of Plaintiff's objection, this Court finds it appropriate to engage in a *de*
9 *novo* review to determine whether to adopt Magistrate Judge Ferenbach's
10 Recommendation. The Magistrate Judge recommends dismissal of the complaint with
11 leave to amend because Plaintiff failed to allege sufficient facts to support his claims.
12 (ECF No. 3.) In his objection, Plaintiff claims his bail motion is an exhibit in this case
13 (ECF No. 3 at 2), but no such motion is attached to his complaint. Regardless, attaching
14 Plaintiff's bail motion to a proposed complaint will not cure the deficiencies of his
15 complaint as identified in the Recommendation. The Court agrees with the Magistrate
16 Judge that the complaint fails to state a claim and adopts the Recommendation.


17 It is therefore ordered that the Magistrate Judge's Report and Recommendation
18 (ECF No. 3) is adopted and accepted.

19 It is ordered that the Complaint (ECF No. 4) is dismissed with leave to amend.

20 It is further ordered that, pursuant to Local Rule 15-1, should Plaintiff choose to
21 file an amended complaint, it must be complete in itself without reference to any previous
22 complaint. Plaintiff is given thirty three (33) days from the date the Clerk mails Plaintiff a
23 copy of this Order within which to file an amended complaint remedying, if possible, the
24 defects in the complaint explained in the Magistrate Judge's Report and
25 Recommendation. Any allegations, parties, or requests for relief from prior papers that
26 are not carried forward in the amended complaint will no longer be before the Court.
27 Plaintiff's amended complaint will be subject to screening. The Clerk of the Court is
28 directed to not issue the summons on the amended complaint pending screening.

1 Plaintiff's failure to file an amended complaint within the prescribed time period
2 will result in dismissal of this action with prejudice.

3 DATED THIS 27th day of April 2017.

4 
5 _____
6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28